

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of the Fair Hearing Request of:

HUY N.,

Claimant,

and

REGIONAL CENTER OF ORANGE
COUNTY,

Service Agency.

OAH No. 2009010086

DECISION

This matter came on for regularly scheduled hearing on February 10 and March 2, 2009, in Santa Ana, California, before David B. Rosenman, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California. Claimant Huy N. was represented by his father Chuong N., and mother Uyen T.¹ The Regional Center of Orange County (Service Agency) was represented by Mary Kavli, Manager of Fair Hearings and Mediations.

Evidence was received by documents and testimony. The record was closed and the matter was submitted for decision on March 2, 2009.

ISSUE

As set forth in an Order dated February 9, 2009 (Exhibit 35), the parties agreed that the following issue is to be resolved:

Whether the Service Agency may reduce direct applied behavioral analysis (ABA) services and increase parent consultation services?

FACTUAL FINDINGS

The Administrative Law Judge finds the following facts:

1. Claimant was born April 23, 1999, and is a nine-year-old boy. Claimant is eligible

¹ Claimant and his family are referred to in this way to protect their privacy.

for, and has received services from the Service Agency under the Lanterman Developmental Disabilities Services Act, Welfare and Institutions Code section 4500 et seq., based on diagnoses of autism and mild mental retardation.

2. In a letter dated December 10, 2008, the Service Agency notified Claimant's parents of its rejection of the parents' request for behavioral services to be provided in the form of three hours per week of direct interaction with Claimant (direct services) and three hours per week of consultation with the parents (consultation). The letter also stated that the Service Agency would authorize one hour per week of direct services and five hours per week of consultation, in accordance with the recommendation of the vendor that had been providing Claimant's services, Autism Intervention and Resources (AIR). (Exhibit 3.)

3. Claimant filed a Fair Hearing Request, dated December 28, 2008, resulting in this hearing.

4. Some background information about past services and recommendations by AIR, as well as actions taken by the Service Agency and Claimant's parents, is helpful to place the current dispute in context. This is particularly so as Claimant's parents presently assert that the decision to reallocate service hours is in retaliation for prior disputes and actions. Claimant has received behavioral services, including ABA, from AIR since at least 2006. The number of hours per week, and the allocation between direct services, consultation, and other services, has changed over time. Based on a recommendation in the AIR progress report dated March 12, 2007 (Exhibit 25), the relevant services were changed from six hours per week of direct services to three hours per week of direct services and three hours per week of consultation. The AIR progress report dated February 18, 2008 (Exhibit 21), recommended that the division of weekly service hours change to one hour direct services and five hours of consultation.

5. After the Service Agency sent a letter and Notice of Proposed Action to implement this recommendation from AIR's February 2008 progress report (Exhibit 5), Claimant's parents filed a Fair hearing Request in March 2008 (Exhibit 4). Claimant's parents included the complaints that AIR had eliminated programs and goals without the parents' participation and consent, and that AIR's progress reports contained inaccurate data that needed to be corrected.

6. At the present hearing, Claimant's parents demonstrated instances in which the AIR progress reports, over time, included information on programs and goals that changed over time. They also demonstrated that the format of the AIR progress reports was in response to the Service Agency's suggestions of subjects that it wanted to see included. However, Claimant's parents did not establish that there was some improper purpose behind these changes. Rather, testimony of Sarah Song, Claimant's case supervisor at AIR, established that Claimant was making progress, or not, such that programs and goals were changing, particularly when Claimant mastered a skill. Further, if Claimant did not master a skill and exhibited challenging behaviors, this might also justify modifying a goal or a program. Claimant's parents did not provide evidence to successfully challenge Ms. Song's opinions that the subjects discussed in the progress reports, as well as the suggestions to reallocate the hours of service, were all

supported by the data she reviewed, her observations of Claimant and input from Claimant's tutors, and her training, education and experience.

7. With respect to the claim that the AIR progress reports contain inaccurate data, Claimant's parents pointed to sheets of raw data reflecting a state of affairs that the progress reports did not seem to reflect correctly. For example, regarding Claimant's eloping behavior, the progress report dated July 9, 2008 (Exhibit 19), at page 2 of 5, indicates no eloping while Claimant was with AIR tutors for the reporting period of April 1 through July 31, 2008. However, the data sheets for this same period (Exhibit C-IV-8) depict numerous sessions in which eloping is noted during the approximately 16 sessions with Claimant. Ms. Song and Anahita Renner, the CEO of AST, explained that the reporting protocol for AST is to look at raw data from the last three sessions before a report is prepared on which to base any statements of progress or lack thereof, and that this is a common method used by providers of ABA services.

8. This evidence establishes that the progress reports are not actually accurate in depicting all of the behaviors and actions gathered in the raw data over the entire reporting period. However, there was no evidence that this was anything other than the normal operating procedure for AIR as well as other vendors. Claimant's parents did not establish that there was some improper purpose behind the accuracy and manner in which the progress reports were prepared. However, the evidence does cast doubt upon some of the facts and conclusions set forth in AIR's progress reports.

9. When Claimant's parents expressed to AIR staff some concerns over the data and information included in the progress reports, a meeting was held between the parents and Ms. Song on February 29, 2008. Ms. Song took notes during the meeting. The testimony of Claimant's parents was that Ms. Song acknowledged that portions of the report should be changed, and that she would discuss such changes with Ms. Renner. The testimony of Ms. Song was that she explained to the parents why the report included the questioned information, and why other changes requested by the parents could not be made. Claimant's father testified that Ms. Song subsequently told him that the notes were shredded, and he was concerned that there was no record of the discussion. Ms. Song testified that the notes were in her own version of shorthand and that she transferred the information in them to Claimant's file. It was not established, based on this conflicting evidence, that Ms. Song agreed to make some or all of the changes that were suggested by the parents.

10. After the AIR recommendation to reallocate hours in February 2008, and the Fair Hearing Request in March 2008, dates for mediation and a hearing were set and subsequently continued. The hearing was set for September 16, 2008. AIR continued to provide services to Claimant. On July 27, 2008, Claimant's parents wrote a letter of complaint to William Bowman, the Director of the Service Agency (Exhibits C-IV-11 and C-VI, with attachments 1 through 14). The complaint included events preceding those at issue herein, as well as referring to the AIR progress report, the meeting with Ms. Song in February 2008, and the suggested reallocation of service hours for Claimant.

11. In his response, dated August 26, 2008 (Exhibit C-III-3), Mr. Bowman indicated that the complaint was being considered as having been filed under Welfare and Institutions Code section 4731.² He also wrote that, after learning from Ms. Kavli that the issues in the complaint were also the subject of the pending Fair Hearing Request, he concluded that the section 4731 complaint process “is not the appropriate venue to address your concerns regarding services provided per your son’s Individual Program Plan or RCOC’s notice of proposed action”

12. Claimant’s parents wrote a letter to DDS dated September 15, 2008 (Exhibit C-III-2) referring the complaint to DDS. Of note, the letter states that Claimant’s parents filed the Fair Hearing Request to maintain the service levels for their son, and their belief that, because the Office of Administrative Hearings (OAH) would not hear or resolve the complaint under section 4731, they “had to dismiss the OAH case without prejudice” so as to have the 4731 complaint submitted to DDS. In this regard, Claimant’s parents were in error. Had they chosen to do so, they could have pursued both the 4731 complaint and gone to fair hearing. Unfortunately, as a result of the withdrawal of the Fair Hearing Request, the Service Agency was free to implement the reallocation of services to Claimant and Claimant’s parents lost an opportunity to have that action reviewed at a fair hearing. The withdrawal of the hearing request is dated September 15, 2008. (Exhibit 1a.)

13. DDS responded to the 4731 complaint by letter dated October 30, 2008 (Exhibit C-III-1). The issue stated was whether the Service Agency had deprived Claimant’s parents of their rights to actively participate in the development of Claimant’s programs and goals per section 4646. DDS concluded that the Service Agency was in violation of section 4646.5, subdivision (b), because it had modified Claimant’s Individual Program Plan (IPP) by a process outside of the planning team.

14. During the time that the 4731 complaint was being reviewed by the Service Agency and DDS, several progress reports of AIR contained information about the allocation of the services provided. For example, the reports for the periods April 1 through May 31, 2008 (Exhibit 20), April 1 through July 31, 2008 (Exhibit 19), and July 1 through September 30,

² Under this section, a person “who believes that any right to which a consumer is entitled has been abused, punitively withheld, or improperly or unreasonably denied by a regional center, developmental center, or service provider” may submit a complaint to the director of the regional center, who must reply within 20 days. If the complaining person is not satisfied with the proposed resolution, within 15 days he can refer the complaint to the Department of Developmental Services (DDS). DDS has 45 days to send a written reply.

All further statutory references are to the Welfare and Institutions Code unless indicated otherwise.

2008 (Exhibit 18), all stated that the contract hours were three hours per week of direct services and three hours per week of consultation. However, the recommendation in each of these reports was that services continue at one hour per week of direct services and five hours per week of consultation.

15. After Claimant's parents withdrew their Fair Hearing Request, the Service Agency began efforts to convene a planning team meeting (PTM) to include AIR and the parents, to discuss the service levels. It also implemented a change in the allocation of weekly hours to one hour direct services and five hours consultation, effective September 22, 2008. (See, for example, Consumer Transaction notes dated 9/15/08, 9/19/08, 9/22/08, 9/23/08, 10/1/08, in Exhibit 10, and Purchase of Service, Exhibit 33.) There was tension between Claimant's parents and the tutors over what hours and what allocation of services was to be provided, and delays in scheduling of the PTM due to lack of input from Claimant's parents and also their position that the DDS investigation of the 4731 complaint should conclude first.

16. The tutors and staff at AIR believed that Claimant's parents were not complying with the change in service hour allocation and were otherwise hostile to them. Claimant's parents believed that the Service Agency had improperly changed the service hours allocation and had suspicions that AIR and the Service Agency were taking actions in retaliation for their filing of the 4731 complaint. The relationships between Claimant's parents, AIR, and the Service Agency deteriorated.

17. AIR determined that it no longer wanted to provide services to Claimant and, as allowed, considered sending a notice that it would end services in 15 days. The Service Agency prevailed upon AIR to increase the time to 30 days. On November 10, 2008, AIR notified Claimant's parents and the Service Agency that its services would end on December 6, 2008. (Exhibits 15 and 16.)

18. A PTM took place on December 5, 2008. (See notes of the PTM, Exhibits 14 and C-VIII-1.) The Service Agency prepared a letter summarizing the PTM (Exhibit 3.) In summary, the Service Agency was looking for a new vendor to provide ABA services to Claimant, and denied the parents' request to have the service hours allocated as three hours per week for direct services and three hours per week for consultation. The letter also noted that the Service Agency would submit referrals for a functional behavioral assessment to evaluate Claimant's current behaviors. This is the same letter from which Claimant's parents filed the present Fair Hearing Request.

19. At the hearing, the allocation of service hours suggested by AIR, that is, one hour per week for direct services and five hours per week for consultation, was supported by the testimony of Ms. Song and Ms. Renner from AIR, as well as Destini Kulik, a behavior services specialist for the Service Agency. Ms. Kulik holds a Master's degree and is a Board-certified behavioral analyst. Based largely upon the AIR reports, Ms. Kulik testified that the Service Agency's Behavior Services Resource Group agreed with the AIR recommendations and approved the reallocation of service hours. Ms. Kulik was also aware that, following AIR's

termination of services, the Service Agency actively sought referrals for services and an assessment for Claimant.

20. Throughout the process noted above, Claimant's parents have been strong advocates on behalf of their son. Claimant's parents are obviously very devoted to Claimant and exert much time and energy providing the best support they can to all family members.

21. At the PTM on December 5, 2008, Claimant's father made various suggestions about services, including the desire to maintain the prior allocation of hours, and pointed out that DDS had determined that the process to change the allocation of hours violated the law. The Service Agency disagreed with these suggestions. At the hearing, Claimant's father stated that he would like Claimant to receive a full assessment, of all behaviors, not just those listed on a Service Agency referral form (see Exhibit 26). He is also concerned that the AIR reports will be sent to proposed assessors, and contends that the AIR reports contain false information. Claimant's mother testified that the AIR tutors were ineffective in the consultation services that they provided, and often cut the time short in tutoring sessions or did not actively engage with Claimant during much of the session time.

22. For the reasons more specifically set forth in the discussion below, the preponderance of the evidence submitted favors the decision to have a new functional behavioral assessment, under certain conditions set forth below, to determine the appropriate level of services for Claimant.

CONCLUSIONS OF LAW AND DISCUSSION

Pursuant to the foregoing factual findings, the Administrative Law Judge makes the following conclusions of law and determination of issues:

1. Throughout the applicable statutes and regulations, found in sections 4700-4716, and California Code of Regulations, title 17, sections 50900 - 50964, the state level fair hearing is referred to as an appeal of the regional center's decision. In this instance, where the Service Agency seeks to modify a service, the burden is on it to demonstrate that its decision is correct. The burden of proof is by a preponderance of the evidence. (Evid. Code, §§ 115 and 500.) To meet its burden of proof, the Service Agency must submit a preponderance of evidence to establish that it is entitled to terminate the benefits provided to Claimant.

2. Under section 4620, subdivision (c), the Service Agency is responsible for providing services and supports for individuals with developmental disabilities. In doing so, the Service Agency must respect the choices made by consumers and their families under section 4502.1. Services are designed toward "alleviation of a developmental disability," and among the services and supports to be provided are behavior training and behavior modification programs, under section 4512, subdivision (b).

3. The process for identifying the need for services and for providing funding for the

services by regional centers is generally set forth in sections 4646 and 4648. As applied to this case, that process includes that a request for the services, or for a change in services, would be made and discussed by the team responsible for coordinating a consumer's plan of services, including the parents and Service Agency representatives.

4. The applicable sections of the Code address the team nature of the decision-making process regarding those services that are to be supplied or funded by the Service Agency. This is accomplished by the IPP process, which is described and referred to in numerous sections of the Act. Set out below are some of the sections that describe the purpose of the IPP and the process of preparing and modifying the IPP.

5. Section 4512, subdivision (b), provides, in part:

“‘Services and supports for persons with developmental disabilities’ means specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option.”

6. Section 4646 provides, in part:

“(a) It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

“(b) The individual program plan is developed through a process of individualized needs determination. The individual with developmental disabilities and, where appropriate, his or her parents, legal guardian or conservator, or authorized representative, shall have the opportunity to actively participate in the development of the plan. [¶] . . . [¶]

“(d) Individual program plans shall be prepared jointly by the planning team. Decisions

concerning the consumer's goals, objectives, and services and supports that will be included in the consumer's individual program plan and purchased by the regional center or obtained from generic agencies shall be made by agreement between the regional center representative and the consumer or, where appropriate, the parents, legal guardian, conservator, or authorized representative at the program plan meeting.”

7. Section 4646.5 provides, in part:

“(a) The planning process for the individual program plan described in Section 4646 shall include all of the following:

“(1) Gathering information and conducting assessments to determine the life goals, capabilities and strengths, preferences, barriers, and concerns or problems of the person with developmental disabilities. For children with developmental disabilities, this process should include a review of the strengths, preferences, and needs of the child and the family unit as a whole. Assessments shall be conducted by qualified individuals and performed in natural environments whenever possible. Information shall be taken from the consumer, his or her parents and other family members, his or her friends, advocates, providers of services and supports, and other agencies. The assessment process shall reflect awareness of, and sensitivity to, the lifestyle and cultural background of the consumer and the family.

“(2) A statement of goals, based on the needs, preferences, and life choices of the individual with developmental disabilities, and a statement of specific, time-limited objectives for implementing the person's goals and addressing his or her needs. These objectives shall be stated in terms that allow measurement of progress or monitoring of service delivery. These goals and objectives should maximize opportunities for the consumer to develop relationships, be part of community life in the areas of community participation, housing, work, school, and leisure, increase control over his or her life, acquire increasingly positive roles in community life, and develop competencies to help accomplish these goals. [¶] . . . [¶]

“(4) A schedule of the type and amount of services and supports to be purchased by the regional center or obtained from generic agencies or other resources in order to achieve the individual program plan goals and objectives, and identification of the provider or providers of service responsible for attaining each objective, including, but not limited to, vendors, contracted providers, generic service agencies, and natural supports. The plan shall specify the approximate scheduled start date for services and supports and shall contain timelines for actions necessary to begin services and supports, including generic services. [¶] . . . [¶]

“(b) For all active cases, individual program plans shall be reviewed and modified by the planning team, through the process described in Section 4646, as necessary, in response to the person's achievement or changing needs, and no less often than once every three years. If the consumer or, where appropriate, the consumer's parents, legal guardian, or conservator requests an individual program plan review, the individual program shall be reviewed within 30 days

after the request is submitted.”

8. Section 4647, subdivision (a), provides:

“(a) Pursuant to Section 4640.7, service coordination shall include those activities necessary to implement an individual program plan, including, but not limited to, participation in the individual program plan process; assurance that the planning team considers all appropriate options for meeting each individual program plan objective; securing, through purchasing or by obtaining from generic agencies or other resources, services and supports specified in the person's individual program plan; coordination of service and support programs; collection and dissemination of information; and monitoring implementation of the plan to ascertain that objectives have been fulfilled and to assist in revising the plan as necessary.”

9. Section 4648, subdivision (a)(1), provides:

“In order to achieve the stated objectives of a consumer’s individual program plan, the regional center shall conduct activities including, but not limited to, all of the following:

“(a) Securing needed services and supports.

“(1) It is the intent of the Legislature that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and in exercising personal choices. The regional center shall secure services and supports that meet the needs of the consumer, as determined in the consumer’s individual program plan, and within the context of the individual program plan, the planning team shall give highest preference to those services and supports which would allow minors with developmental disabilities to live with their families, adult persons with developmental disabilities to live as independently as possible in the community, and that allow all consumers to interact with persons without disabilities in positive, meaningful ways.”

10. The process created by these sections and others can be summarized and explained in less technical terms. The Code sections set forth criteria that relate to the development and modification of an IPP for a person with a developmental disability, referred to as a consumer.

An IPP is developed through a collaborative effort involving the appropriate regional center and the consumer and/or the consumer’s representative(s), and others, sometimes collectively referred to as the interdisciplinary team (or ID Team). It was the intent of the Legislature that persons with diverse skills and expertise were to serve on the ID Team. They were intended to confer, deliberate, and decide what should be included in the consumer’s IPP. The ID Team may not abdicate its role nor may it ignore its duty owed not only to the consumer but also to the IPP process.

The IPP is prepared for the consumer by identifying necessary services and supports. The Service Agency must allow the consumer and his parents to participate in

developing the IPP. The plan must be based on information and assessments relating to the consumer's life goals, his capabilities and strengths, his preferences, any barriers to meeting his goals, his concerns, and other relevant data.

Assessments must be conducted by qualified individuals and performed in natural environments whenever possible. Information must be obtained from the consumer, the consumer's parents and other family members, friends, advocates, any providers of services and supports, and any other interested agencies. The assessment process must reflect an awareness of, and sensitivity to, the lifestyle and cultural background of the consumer and the family. Claimant and his parents have the reciprocal obligation to assist the Service Agency in meeting its mandate. No consumer should benefit by withholding information or by refusing to cooperate with the regional center, even if such conduct is well intentioned.

An IPP must include a statement of the consumer's goals, based on the consumer's needs, preferences, and life choices. An IPP must contain specific, time-limited objectives to implement identified goals. Objectives must be constructed to allow measurement of progress and monitoring of service delivery. Identified goals and objectives should maximize a consumer's opportunity to develop relationships and participate in community life, in housing, work, school, and leisure activities. Identified goals and objectives should increase the consumer's control over his life, should assist the consumer in acquiring increasingly positive roles in community life, and should be directed toward developing competency to help accomplish these goals. Proper goals and objectives allow for efficient evaluation of the effectiveness of the plan and the progress made by a consumer.

The regional center is required to prepare a plan identifying the services and supports a consumer needs to meet the goals and objectives identified by the ID Team, and determine whether those services and supports are to be purchased by the regional center, obtained from generic agencies, or provided from other sources. Claimant and his parents have the right to provide the Service Agency with input into the selection of the providers of those services and supports.

If a consumer and/or his representatives do not agree with all of the components contained in an IPP, the area(s) of disagreement may be noted; but, a disagreement with specific IPP components does not prevent implementation of those services and supports to which there is no disagreement. The regional center must send written notice advising the consumer and/or his representatives of the right to a fair hearing as to the areas of disagreement.

These statutes require that the services provided must be effective in meeting IPP goals, that the IPP should reflect the preferences and choices of the consumer, and that the IPP should be cost-effective in its use of public resources.

11. When the parties involved in planning the consumer's services cannot reach an agreement, it is appropriate to take that disagreement to a fair hearing, present relevant evidence, and have a decision prepared to resolve the issue. See sections 4710, 4710.5, 4710.7

and 4712.

12. The present situation must be remedied for the benefit of Claimant. Claimant should receive a full assessment to help determine the type and level of services he requires. Claimant's parents should be allowed to provide to the Service Agency any information they believe an assessor should be aware of in order to assess Claimant's condition, and they must participate in any assessment process and the collaborative planning process. The unique aspects of the IPP process, and its dependence on family participation in the determination of goals and objectives for Claimant's ongoing services, cannot be stressed enough.

13. Claimant's parents did not submit sufficient evidence to counter the AIR recommendation and the action of the Service Agency to reallocate Claimant's service hours, and the Service Agency may therefore reduce direct ABA services and increase parent consultation services. Claimant's parents submitted evidence that the AIR reports might not fully describe Claimant's significant behaviors, progress, or lack thereof. However, there was insufficient evidence on which to conclude that AIR's recommendation for reallocation of service hours was not supported by the clinical evidence. Nor did the parents submit evidence from any other properly qualified professional to demonstrate that AIR's recommendations are not supported by the actual progress and behaviors exhibited by Claimant.

14. However, because there is no vendor presently supplying ABA services to Claimant, and because the Service Agency and Claimant's parents agree that a new assessment is needed, there should also be a process for that assessment to occur with input from Claimant's parents. The assessment should include recommendations for types of services to be provided. Therefore, in addition to the material that the Service Agency wants an assessor to review, Claimant's parents should also be allowed to submit information for the assessor to consider, within reason.³

15. Under all of the circumstances herein, the assessment should take place and Claimant's parents should be permitted to submit a written letter to the Service Agency to forward to the assessor, of no more than 15 pages, addressing, among other things, those behaviors that they feel should be assessed, as well as any information in the AIR progress reports that they believe is inaccurate. Also, the assessor should be provided with a copy of this Decision.

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³ It is noted that Claimant's parents (and the Service Agency, for that matter) submitted written evidence for the hearing that went far beyond the issue to be decided. A reasonable limit should allow Claimant's parents the appropriate opportunity to raise their concerns for the assessor to consider.

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16. It is not necessary to reach any further conclusions on the Claimant's parents' assertion that they were the subject of some retaliatory action. Although the Fair Hearing Request includes such a claim, the issue, as agreed (see Exhibit 35), does not include that assertion.

ORDER

WHEREFORE, THE FOLLOWING ORDERS are hereby made:

1. Claimant's appeal of the Service Agency's decision is denied. The Service Agency may reduce direct ABA services and increase parent consultation services.
2. If a new assessment of Claimant is arranged by the Service Agency, Claimant's parents may submit a written letter to the Service Agency to forward to the assessor, of no more than 15 pages, addressing, among other things, those behaviors that they feel should be assessed, as well as any information in the AIR progress reports that they believe is inaccurate.
3. If a new assessment of Claimant is arranged by the Service Agency, the assessor should be provided with a copy of this Decision.

DATED: March 12, 2009.

/s/

DAVID B. ROSENMAN
Administrative Law Judge
Office of Administrative Hearings

Notice: This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days of receipt of the decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)